

Montana Water Court  
PO Box 1389  
Bozeman, MT 59771-1389  
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(406) 586-4364  
watercourt@mt.gov

IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
SUN RIVER BASIN (41K)

\* \* \* \* \*

CLAIMANTS: Sun River Sawtooth Ranch, LLC; United  
States of America (Bureau of Land Management)

**CASE 41K-0593-R-2023**

41K 30127539

41K 30127540

41K 30141389

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

All water right claims that appeared in the Preliminary Decree for Sun River (Basin 41K) were subject to "issue remarks" resulting from pre-decree examination by

the DNRC, objections, and counterobjections. Claims 41K 30127539 and 41K 30127540 are owned by Sun River Sawtooth Ranch, LLC, and claim 41K 30141389 is owned by the United States Bureau of Land Management (“BLM”). Each claim received issue remarks during the DNRC’s review of the claims.

Claims 41K 30127539, 41K 30127540 and 41K 30141389 were consolidated into Case 41K-0593-R-2023 and an Order Setting Filing Deadline was issued by the Water Court requesting any additional information needed to resolve the issue remarks.

### FINDINGS OF FACT

1. Claims 41K 30127539 and 41K 30127540 received the following substantive issue remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT  
APPEAR TO BE DUPLICATE FILINGS. IT APPEARS ONLY ONE  
WATER RIGHT IS INVOLVED. 30127539 30127540

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT  
WERE FILED BY DIFFERENT PARTIES WHO CLAIM  
OVERLAPPING PLACES OF USE. 30127539, 30127540 & 30141389.

Claim 41K 30141389 received the following issue remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT  
APPEAR TO BE DUPLICATE FILINGS. IT APPEARS ONLY ONE  
WATER RIGHT IS INVOLVED. 30127539 30127540 30141389

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT  
WERE FILED BY DIFFERENT PARTIES WHO CLAIM  
OVERLAPPING PLACES OF USE. 30127539, 30127540, AND  
30141389.

AS OF 1/13/2020, ACCORDING TO CADASTRAL RECORDS, POD ID#6  
APPEARS TO BE OWNED BY SUN RIVER RANCH LLC.

2. On April 26, 2023, BLM filed a *Notice of Filing of Norris Declaration to Resolve Issue Remarks* which included information in the form of a *Declaration* from BLM water right specialist Melissa Norris, a proposed abstract, a 2010 federal land patent, and maps of the point of diversion and place of use for claim 41K 30141389. In her *Declaration*, Ms. Norris states that after personally reviewing each claim, claims 41K 30127539 and 41K 30127549 are stock water rights owned by Sun River Sawtooth Ranch, LLC with a priority date of April 2, 1932, while claim 41K 30141389 is a stock

water claim owned by BLM with a priority date of March 16, 1938. According to Ms. Norris, livestock access the Sun River via private and federal land in sec 27, sec 28, sec 29, sec 31, sec 32, and sec 33. Further, Ms. Norris states that private claim 41K 30127539 overlaps with BLM claim 30141389 on federal land in the NENESW of sec 31, twp 22N, rge 8w in Lewis and Clark County, and private claim 41K 30127540 overlaps BLM claim 30141389 on federal land in the SESW of sec 28, the NENE and E2E2NE in section 32 in twp 22N rge in Teton County and portions of the NW of sec 33, twp 22N, rge 8W in Lewis and Clark County. Additionally, Ms. Norris states that the overlapping portions are located within the Willow Creek Canal grazing allotment of which the grazing permit holder is Sun River Sawtooth Ranch, LLC. Although the claims have overlapping places of use involving federal land, Ms. Norris states that the claims are not duplicate filings because they have differing priority dates and BLM did not object to overlapping exempt filings by its permittees.

The *Notice of Filing* also includes proposed abstracts for claim 41K 30141389 addressing the ownership issue remark. Further, Ms. Norris states that the issue remark denoting point of diversion and place of use No. 6 being on land owned by Sun River Sawtooth Ranch, LLC is incorrect. Rather, Ms. Norris declares that Montana Cadastral erroneously shows the portion of govt lot 5 lying east of the Sun River as being privately owned when in fact the whole of govt lot 5 is federal land administered by BLM. Instead, the portion in question is actually govt lot 6 which is designated as point of diversion and place of use No. 7. Finally, Ms. Norris states that in 2010, govt lot 6 was patented and removed from the public domain as indicated by the 2010 federal land patent attached to the *Declaration*. The proposed modification to the point of diversion and place of use for claim 41K 30141389 is:

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
3		SWSE	31	22N	8W	LEWIS AND CLARK
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
4	3		31	22N	8W	TETON
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
5	5		31	22N	8W	LEWIS AND CLARK
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
6	5		31	22N	8W	TETON
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
<del>7</del>	<del>6</del>		<del>31</del>	<del>22N</del>	<del>8W</del>	<del>TETON</del>
<del>Period of Diversion: JANUARY 1 TO DECEMBER 31</del>						
<del>Diversion Means: LIVESTOCK DIRECT FROM SOURCE</del>						
8		NENE	32	22N	8W	LEWIS AND CLARK
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
4		3		31	22N	8W	TETON
5		5		31	22N	8W	LEWIS AND CLARK
6		5		31	22N	8W	TETON
<del>7</del>		<del>6</del>		<del>31</del>	<del>22N</del>	<del>8W</del>	<del>TETON</del>
8			NENE	32	22N	8W	LEWIS AND CLARK

3. Also on April 26, 2023, Sun River Sawtooth Ranch, LLC filed a *Response* to the Court's filing deadline. The *Response* confirms that claims 41K 30127539 and 41K 30127540 are not duplicate filings of BLM claim 41K 30141389 because they have differing priority dates and are based on different appropriations.

4. Each claim also received a notice-type issue remark during the DNRC claims reexamination.

## PRINCIPLES OF LAW

1. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

2. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

3. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

4. If a claimant agrees to reduce or limit a claim, the Water Court may accept the reduction or limitation without reviewing further evidence, unless an unresolved issue remark remains. Rule 17(c), W.R.Adj.R.

#### CONCLUSIONS OF LAW

1. The information in the record resolves issue remarks appearing on each claim. Based on the information contained in BLM's *Notice of Filing*, along with the information contained in Sun River Sawtooth Ranch, LLC's *Response*, the overlapping place of use and duplicate filing issue remarks are resolved and should be removed from the claims.

2. Claim 41K 30141389 should be modified as described in Finding of Fact No. 2. Pursuant to Rule 17(c), W.R.Adj.R. The ownership issue remark should be removed.

3. The notice-type issue remarks appearing on each claim served their notice purpose and should be removed from the claims.

#### RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court adopt the changes as outlined above.

Post decree abstracts of the water right claims reflecting the recommended changes are attached to this Report.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Sun River Sawtooth Ranch, LLC  
1320 Mills St.  
Menlo Park, CA 94025-3210

**Service Via Electronic Mail:**  
**(Last Order)**

United States of America (Bureau of Land Management)  
5001 Southgate Dr.  
Billings, MT 59101-4669  
Mnorris@Blm.gov  
MontanaBasins.Enrd@Usdoj.Gov

**Eve W. McDonald, Trial Attorney**  
**Natural Resources Section**  
**Environment & Natural Resources Division**  
**U.S. Department of Justice**  
**999 18th St, South Terrace, Suite 370**  
**Denver, CO 80202**  
**(303) 844-1381**  
**Evelyn.mcdonald@usdoj.gov**  
**MontanaBasins.ENRD@USDOJ.GOV**

**Service List Updated: 8//14/2023**

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**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**SUN RIVER**  
**BASIN 41K**

**Water Right Number:** 41K 30127539 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** SUN RIVER SAWTOOTH RANCH LLC  
1320 MILLS ST  
MENLO PARK, CA 94025 3210

**Priority Date:** APRIL 2, 1932

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** SUN RIVER

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		W2NWSW	27	22N	8W	TETON
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
2		NENESW	31	22N	8W	LEWIS AND CLARK
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
3		SENWNW	33	22N	8W	TETON
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			W2NWSW	27	22N	8W	TETON
2			NENESW	31	22N	8W	LEWIS AND CLARK
3			SENWNW	33	22N	8W	TETON

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**SUN RIVER**  
**BASIN 41K**

**Water Right Number:** 41K 30127540 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** SUN RIVER SAWTOOTH RANCH LLC  
1320 MILLS ST  
MENLO PARK, CA 94025 3210

**Priority Date:** APRIL 2, 1932

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** SUN RIVER

**Source Type:** SURFACE WATER

**Source Name:** UNNAMED TRIBUTARY OF SUN RIVER

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESW	28	22N	8W	TETON
<b>Source Name:</b> SUN RIVER						
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31						
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE						
2		S2SWSE	29	22N	8W	TETON
<b>Source Name:</b> UNNAMED TRIBUTARY OF SUN RIVER						
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31						
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE						
3		NENE	32	22N	8W	TETON
<b>Source Name:</b> UNNAMED TRIBUTARY OF SUN RIVER						
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31						
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE						
4		E2E2NE	32	22N	8W	TETON
<b>Source Name:</b> SUN RIVER						
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31						
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE						



5 NW 33 22N 8W LEWIS AND CLARK

**Source Name:** SUN RIVER

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SESW	28	22N	8W	TETON
2			S2SWSE	29	22N	8W	TETON
3			NENE	32	22N	8W	TETON
4			E2E2NE	32	22N	8W	TETON
5			NW	33	22N	8W	LEWIS AND CLARK

ALL OR A PART OF THE PLACE OF USE CONSISTS OF FEDERAL PUBLIC LANDS. THE WATER RIGHT USED ON THE PUBLIC LANDS IS APPURTENANT TO THE FOLLOWING PRIVATE LANDS: SEC 27, 28, 29, 31, 32, 33 TWP 22N RGE 8W, TETON COUNTY. SEE THE CLAIM FILE FOR THE COMPLETE LEGAL LAND DESCRIPTION OF THE PRIVATE LAND TO WHICH THIS WATER RIGHT IS APPURTENANT.

ALL OR A PART OF THE PLACE OF USE CONSISTS OF FEDERAL PUBLIC LANDS. THE WATER RIGHT USED ON THE PUBLIC LANDS IS APPURTENANT TO THE FOLLOWING PRIVATE LANDS: SEC. 27, 31, 32, 33, 34 TWP 22N RGE 8W, LEWIS AND CLARK COUNTY. SEE THE CLAIM FILE FOR THE COMPLETE LEGAL LAND DESCRIPTION OF THE PRIVATE LAND TO WHICH THIS WATER RIGHT IS APPURTENANT.

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**SUN RIVER**  
**BASIN 41K**

**Water Right Number:** 41K 30141389 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)  
5001 SOUTHGATE DR  
BILLINGS, MT 59101 4669

**Priority Date:** MARCH 16, 1938

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** SUN RIVER

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESW	28	22N	8W	LEWIS AND CLARK
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
2		SESW	28	22N	8W	TETON
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
3		SWSE	31	22N	8W	LEWIS AND CLARK
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
4	3		31	22N	8W	TETON
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
5	5		31	22N	8W	LEWIS AND CLARK
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
6	5		31	22N	8W	TETON
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					

7	NENE	32	22N	8W	LEWIS AND CLARK
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE					
8	NENE	32	22N	8W	TETON
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE					
9	SENE	32	22N	8W	LEWIS AND CLARK
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE					
10	SENE	32	22N	8W	TETON
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE					
11	NENW	33	22N	8W	LEWIS AND CLARK
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE					
12	NENW	33	22N	8W	TETON
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE					
13	SENW	33	22N	8W	LEWIS AND CLARK
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE					
14	SWNW	33	22N	8W	LEWIS AND CLARK
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE					
<b>Period of Use:</b> JANUARY 1 TO DECEMBER 31					

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SESW	28	22N	8W	LEWIS AND CLARK
2			SESW	28	22N	8W	TETON
3			SWSE	31	22N	8W	LEWIS AND CLARK
4		3		31	22N	8W	TETON
5		5		31	22N	8W	LEWIS AND CLARK
6		5		31	22N	8W	TETON
7			NENE	32	22N	8W	LEWIS AND CLARK
8			NENE	32	22N	8W	TETON
9			SENE	32	22N	8W	LEWIS AND CLARK
10			SENE	32	22N	8W	TETON
11			NENW	33	22N	8W	LEWIS AND CLARK
12			NENW	33	22N	8W	TETON
13			SENW	33	22N	8W	LEWIS AND CLARK
14			SWNW	33	22N	8W	LEWIS AND CLARK

**Remarks:**

BLM FILED ELECTRONIC CLAIMS. THIS CLAIM REFERENCES BLM CLAIM ID BLM2031 AND GRAZING ALLOTMENT MT07612.